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ABSTRACT

Suggestions to boards of education on handling an impasse situation in bargaining are given. Boards are advised to fully assess the possibility of gaining an acceptable agreement at the beginning of the negotiation session. If this cannot be done, six assumptions are offered as good advice in dealing with all impasse situations. Advice written by Hugh Casey, labor relations consultant, is presented regarding the avoidance of impasse. This advice includes six points on how to obtain a mutually acceptable solution and six points on how to determine if impasse is the next step when an agreement has not been made. A brief summary is given which warns that the longer contract talks last, the more the board loses in money and prerogatives. Information about the book, "The Art and Science of Negotiation" by Howard Raiffa-Cambridge, is provided. The book is suggested as background reading. (EM)

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1983 NSBA Convention/San Francisco April 23-26
Speaker Boyles Clinic No. B-24

DR. LYLE E. BOYLES
CLINIC B-24: HOW TO HANDLE IMPASSES IN BARGAINING

IMPASSE ----- How to deal with it? Try to avoid it? Take a highly visible adversary position from the outset? Deal with it from a political standpoint? How about choosing none of the foregoing and considering that an impasse can be an opportunity to sustain responsible and sound educational decisions? If handled correctly, impasse can be an effective tool for the Board of Education. Of course, the latitude available to the Board in impasse depends upon the provisions in each state for it but, generally speaking, there are some basic assumptions that are good advice in all impasse situations.

At the beginning of the negotiating session the Board and its staff should fully assess the possibility of gaining an acceptable agreement. Obviously, if funds for next year are significantly less than in the current year a real possibility exists that a realistic understanding among union people may not develop to a level that will produce an agreement without impasse provisions. Likewise, certain local issues may be, in any given year, of such magnitude that it is not likely that a routine agreement will materialize. If the foregoing climate is present, following are some assumptions that should be helpful.

ASSUMPTION I: Develop the content of all negotiation sessions toward the impasse activity. For example, be sure that material which the Board presents is consistent with material that must be used in mediation and fact-finding activity. Comparability lists and other such information should be appropriate to the situation. (USE OUR EXAMPLE OF LINEAR TRANSITION FACTOR GROUP.)

ASSUMPTION II: Deal with the real issue at the table and in impasse. Trivia material, unrealistic proposals/counter-proposals, and/or personal concerns between negotiators or other key people in the negotiations process should never be reflected in mediation or fact-finding. It shouldn't be in the regular sessions before impasse either. Clearly and specifically-define the issue or issues at impasse and continue to present all legitimate information and material to those points. Do not take a weak argument or an opinion type issue into impasse. It will eventually over-shadow the main areas on which you need favorable decisions.

ASSUMPTION III: Give credit where credit is due. I know of no district that does not have some faculty strengths. These should be recognized at appropriate places through out the entire process. Work which the Board and faculty have successfully completed should be referenced. The positive

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things which have been produced through past agreements should be referred to at appropriate places. Keep in mind that, sooner or later, the Board will have a new agreement. There really is no purpose served by dealing with anything but the real issue or issues during the impasse procedures. The overall adequacy of the educational system and its staff are not at issue in these circumstances. Whether it is right or not, a Board needs to understand that the "maintenance of the professional atmosphere" during the entire process falls to them. How that is done and the stamina necessary to carry it out can be the most intense activity that a school board member encounters. Personally, I'll assure you that it is worth the effort and the quality of the local system will stay higher over a period of time by giving some recognition to this area.

ASSUMPTION IV: This assumption is somewhat complex in that it calls for an "honesty" in the decision-making process. By this, I mean support major decision-making with a well developed amount of information and facts. It is easy and expedient to establish a major decision through opinions and impressions. Sometimes such decisions take on the same significance as the "shadow in the lake." Those same opinions and impressions take on a little different look with each "drift of the facts" just like the lake shadow does with each "puff of the wind on the water." In those cases, where such approach has been used mediation and fact-finding are extremely difficult and Boards almost universally receive poor outcomes at the end of the process. Another level of this same assumption is the attempt to "hide" facts in undefined contingencies or line item estimates. Bottom line - be open and pursue your decisions with good facts and a confidence in those facts.

ASSUMPTION V: Require the maintenance of management systems in educational planning and budgeting that are open and understandable by each Board member as well as others. One should realize that many of the interests and influences of negotiations are not precisely predictable but it is predictable that a number of special interests are at work each time the process is undertaken. The expression of such special interests should be heard, considered and dealt with during the planning and preliminary budgeting procedures not after some major decision-making has occurred. The ability to produce some significant evidence of a good level of management systems that provides for this activity will certainly help the Board's position in impasse procedures.

ASSUMPTION VI: Professional, experienced negotiators or educational personnel specialists should be consulted at least once in regard to the adequacy of materials and positions. A "second opinion" approach more than pays for itself in most all cases. Most state school board associations have such service, and it should be used. If not, I'm sure the national association can offer you the kind of service necessary.

To this point, I have talked with you in regard to actually handling the impasse situation once you are in it. Of course, another way to do that is to avoid it. If you are more inclined to try to avoid it, I believe that some advice that Hugh Casey, Labor Relations Consultant, provided in the

Michigan School Board Journal some months ago will be useful to you in avoiding impasse. He stated:

> To avoid an impasse situation during negotiations, experienced negotiators make every effort to maintain an atmosphere in which the parties will be able to continue discussions. As long as the parties are talking about their differences, there's always the possibility of arriving at a mutually acceptable solution.

Further, he wrote that a Board should:

(a) Be prepared, know your party's position on every subject and the extent to which that position may be subject to compromise.
(b) Never make personal attacks on opposing negotiators that could lend to objections based on pride rather than need.
(c) Be flexible. Change topics under discussion if impasse seems near.
(d) Never insist on concessions merely to gain a victory or make a point.
(e) Be willing to listen to the opposing side's arguments. Consider the merits of all demands, and honestly evaluate the validity of your own position.
(f) Never assume that agreement is impossible as long as the other side is willing to continue discussion, even though you may be certain in your own mind that neither party can or will make further concessions.

After all this, if you don't have an agreement, how do you know that impasse is the next step? Minimum conditions are:

(a) the contract has expired,
(b) a considerable number of bargaining sessions have been held,
(c) parties have fully exchanged their demands and explored their respective positions,
(d) proposals and counter-proposals have been examined and exhausted,
(e) the positions of the parties remain apart and frozen,
(f) no time has been set for further meetings.

Summary:

Historically, school boards seem to have felt that their declaration of "impasse" somehow casts them in the role of the "bad guy." This isn't true, especially if the union's demands are unusual or outlandish. If Boards engage in good faith bargaining, they probably won't find a "negotiations impasse" unduly restrictive in attempting to achieve their particular goals and objectives. Nevertheless, the longer contract talks last, the more the Board loses -- in both money and prerogatives.

BACKGROUND READING: The Art and Science of Negotiation by Howard Raiffa-Cambridge: Howard University Press, 1982 (370 pages-$20.) Provides folk truths, theory and practical cases. It clearly illustrates that impasse procedures provide an adversary forum in which advocates try to impose their preferences.

HAND-OUT: (a) Copy of these notes. (b) Copy of article from recent edition of Harvard Business Review. The article "How To Negotiate With Employee Objectors" sets an exemplary tone to the process of negotiations and impasee with the last paragraph clearly summarizing an important principle.

NOTE: I will have copy of our impasse material available to review with any interested parties after the meeting. All Board points sought in it were sustained.

How to negotiate with employee objectors

David W. Ewing

When employees complain, management must respond– but in a positive way

Harvard Business Review, Jan-Feb 1983, p103-110

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